

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)	
)	
Telecommunications Services for)	CG Docket 03-123
Individuals with Hearing and Speech)	
Disabilities)	

**VERIZON'S COMMENTS ON PAYMENT FORMULA AND FUND SIZE
ESTIMATE FOR INTERSTATE TRS FUND
FOR JULY 2005 THROUGH JULY 2006**

Until a decision is reached in the Further Notice of Proposed Rulemaking proceeding¹ and the Commission issues an order that changes the methodology and process for establishing rates for TRS and related services, the Commission should not depart from its practicing of establishing rates using providers' projected cost and demand data and including expenses for marketing and outreach. For this reason, and because the Commission already has before it an extensive record addressing these issues, the Commission should maintain the current rates for TRS, Speech-to-Speech, IP-Relay, and VRS at the levels established by the Commission in its June 29,2006 Order² until the Commission reaches a decision in its rulemaking proceeding on these issues. Alternatively, if the Commission establishes rates for these services for the 2007-2008 period, it should adopt per minute rates based on provider projected cost and

¹ See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket No. 03-123 (July 20,2006) ("FNPRM").

See *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123 (June 29,2006) ("2006 Rate Order").

demand data and include marketing and outreach expenses in the calculation of providers' costs, consistent with Commission practice and precedent.

I. The Commission Should Freeze Rates for TRS and Related Services Until It Resolves the Rate Issues Raised in the FNPRM.

The Commission should freeze the current rates for TRS, Speech-to-Speech, IP-Relay, and VRS at the levels established by the Commission in its 2006 *Rate Order* until the Commission resolves issues raised in its *FNPM*. As the Commission recognized when it adopted the 2006 rates, there has been considerable debate about rates for TRS and related services and, therefore, are a number of issues that need to be resolved with respect to establishing rates for these services.³ Accordingly, in its *FNPM*, the Commission sought comment on a variety of issues relating to the process by which rates are set. Providers and consumers groups alike have filed comments and reply comments on these issues, including information on methodologies to establish rates for each type of TRS service and industry proposals for streamlining the process. Providers also have submitted extensive information on the practicalities and policy reasons for continued funding for marketing and outreach and other costs that are unique to the success of TRS programs.

In short, the Commission now has before it the information it needs to resolve the TRS rate issues that remain outstanding and should do so before issuing new rates that will only perpetuate the concerns that prompted the Commission's *FNPRM* in the first place and raise the same questions the Commission has before it in the *FNPM*. Furthermore, freezing the rates at the current levels until the Commission resolves the issues raised in its *FNPRM* will provide stability until the rulemaking proceeding can be

³ 2006 *Rate Order* at 6-7, 9, 11.

resolved and will not unduly delay the rate-making process or prejudice any party NECA already has collected much of the data that would be needed to establish rates under a number of the methodologies proposed in comments and replies, and, in some instances, has calculated rates accordingly in its recent proposal to the Commission. This means that, once the Commission issues an order adopting methodology for establishing rates for each of the services and establishes guidelines to govern future data submission, rates may be set without much further delay.

II. If the Commission Adopts Rates, It Should Adopt Per Minute Rates Based on Provider Projected Cost and Demand Data and Include Marketing and Outreach Expenses.

Although the Commission should freeze rates for TRS, STS, IP-Relay and VRS until it resolves the issues raised in its *FNPRM* and issues an order establishing the methodology NECA should use to set rates for each of these services, if the Commission adopts rates for TRS, STS, IP-Relay and VRS for the 2007-2008 period, it should adopt per minute rates based on provider projected cost and demand data and include marketing and outreach expenses. NECA's proposal states that in response to issues raised in the *FNPRM*, it has calculated and proposed rates that (i) include both marketing and outreach (ii) exclude one or the other; or (iii) exclude both. But as Verizon has explained before, NECA has no authority to change the Commission's rules or methodology for setting TRS rates, and if the Commission wants to do so, it may do so only prospectively through an order adopted after interested parties have received notice and an opportunity to comment, as required by the Administrative Procedure Act ("APA").⁴ Accordingly,

⁴ See Verizon's Comments on Payment Formula and Fund Size Estimate for Interest TRS Fund for July 2005 through July 2006, *In the Matter of Telecommunications*

NECA proposed rates that are calculated by excluding costs for provider marketing and outreach activities are unlawful and should be rejected for the same reasons the Commission rejected these rates in its 2006 *Rate Order*.

First, the Commission's rules currently require providers to market and advertise the availability of TRS services to assure that consumers are aware of the availability of all forms of TRS, and the rules expressly allow for compensation from the TRS Fund for reasonable expenses associated with these marketing and outreach requirements.'

Section 64.604(c)(iii)(3) of the Commission's rules states:

Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories shall assure that callers in their service areas are aware of the availability and use of all forms of TRS.

47 C.F.R. § 64.604(c)(iii)(3). These activities fall within the rubric of marketing and advertising and are not limited to outreach activities. Although NECA revised the definitions for "marketing" and "outreach" in its instructions to providers submitting data **for** the current rate-setting cycle, and NECA attempts to draw a distinction that would allow the Commission to exclude some of both of these costs, the Commission's precedent makes no such distinction.

To the contrary, the Commission repeatedly has reminded providers of their obligation to market and advertise TRS services and engage in outreach activities. In its *First Report and Order* relating to TRS services, the Commission clarified that "the

Rely Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123 (May 17, 2006).

⁵ See 47 C.F.R. § 64.604(c)(5)(iii)(E).

current rule obligates carriers to assure that ‘callers’ in their service areas are aware of TRS.”⁶ The Commission explained:

It is crucial for everyone to be aware of the availability of TRS for it to offer the functional equivalence required by the statute. As Congress has stated, TRS was designed to help bridge the gap between people with hearing and speech disabilities and people without such disabilities with respect to telecommunications services. The lack of public awareness prevents TRS from achieving this Congressionally mandated objective.⁷

In its *June 2004 Order*, the Commission expressed concern about efforts to make all consumers aware of the uses and availability of TRS services and reiterated that its “regulations reflect that it is the duty and responsibility of common carriers obligated to provide TRS to ensure that the public is aware of TRS.”⁸ Furthermore, the Commission has confirmed that providers may receive compensation from the TRS Fund for reasonable expenses associated with complying with this requirement and has sought comment **on** whether a national outreach program is warranted.’ Any categorical exclusion of marketing and advertising or outreach expenses, therefore, cannot be justified under **the** Commission’s precedent.

Second, if the Commission wants to change its rules relating to TRS rate setting and costing structure to exclude marketing and outreach expenses, it can only do so prospectively through an order issued after it has first given providers notice and a

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140 ¶ 105 (2000) (“*First Report and Order*”);

⁷ *Id.*

⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12,475 ¶ 95 (“*June 2004 Order*”).

⁹ *Id.* at ¶ 97 (“These costs, as we have noted, may include costs attributable to reasonable outreach efforts, and in this way some of the costs for outreach are already supported by the Interstate TRS Fund”).

meaningful opportunity to be heard, as required by the **APA**. Section 552 of the **APA** requires government agencies, and agents acting on delegated authority, to provide notice and an opportunity to comment on proposed agency rule changes.” Where an agency “encodes a substantive value judgment,” or sets a “substantive standard,” notice and comment is required before the rule change may be adopted.” This assures that an agency, or its agent, has before it the facts and information relevant to addressing a particular issues as well as alternative solutions.

To exclude providers’ marketing and advertising or outreach expenses in calculating rates for TRS and related services and establishing TRS Fund costs and contributions without first issuing an order in a rulemaking proceeding where these issues have been briefed extensively, would mark a significant departure from prior Commission and **NECA** practice and would effectively change the underlying standards that apply in calculating TRS providers costs without prior notice.

Third, as a matter of public policy, marketing and advertising and outreach expenses should be included in TRS providers’ cost recovery because these activities are essential to increasing awareness and use of all forms of TRS, which the Commission has long recognized is necessary to ensure functional equivalency.” As Verizon and other

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¹¹ The APA’s provisions for notice and comment are set forth in 5 U.S.C. § 552.
See JEM Broadcasting Co. v. FCC, 22 F.3d 320,327-28 (D.C. Cir. 1994).
¹² *See First Report and Order* ¶ 105 (“It is crucial for everyone to be aware of the availability of TRS for it to offer the functional equivalence required by the statute”); *June 2004 Order* ¶ 95 (“Those who rely on TRS for access to the nation’s telephone system ... gain little from the mandate of Title IV if persons receiving a TRS call do not understand what a relay call is and therefore do not take the call, or if persons desiring to call a person with a hearing or speech disability do not know that this can easily be accomplished through TRS (and dialing 711)”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. **03-123**, Statement of Commissioner Kevin J. Martin on Declaratory Ruling

providers explained in comments and replies submitted in response to the *FNPRM*, TRS marketing and advertising and outreach serves a different purpose from marketing and advertising to consumers that do not have hearing and speech disabilities. TRS marketing and advertising supports outreach efforts through the creation of collateral materials such as product fact sheets and “how to guides” that teach users about TRS products and services. TRS marketing and advertising personnel also draft materials that Verizon’s outreach organization uses to promote awareness of TRS products and services through text blasts and emails to individuals with hearing and speech disabilities. These activities and materials are not designed or directed to increasing market share. In turn, Verizon’s marketing/advertising department uses feedback from the outreach staff to make product enhancements and improvements necessary to ensure that TRS products and related services meet minimal standards for “functional equivalency.”

TRS marketing/advertising personnel also provide TRS product support by managing products through their lifecycle to ensure devices and services operate with the most efficient, cost-effective technology and are interoperable and technologically compatible. Marketing personnel, for example, locate and expand product platforms and assist the outreach department in educating consumers with hearing and speech disabilities in how to use TRS products and how to configure the applications over a variety of devices and platforms.

As the Commission has acknowledged before, relay users historically have been isolated and under-served consumers of telecommunications services. The unavailability

and Further Notice of Proposed Rulemaking (rel. May 3, 2006) (“The Commission’s work [is] to ensure that all Americans have full access to communications and emergency services.”).

of telecommunications services has contributed to consumers with hearing and speech disabilities being under- and unemployed and has limited their opportunities to be full participants in their respective communities.¹³ The marketing and advertising activities described above are an essential component of TRS providers' efforts to educate consumers about the availability and uses of TRS services. Accordingly, as a matter of policy, the Commission should continue to allow providers to be compensated for marketing and advertising and outreach expenses related to providers' efforts to educate TRS users regarding technological enhancements and access improvements and to provide consumer support.

¹³


First Report and Order ¶ 104.

III. Conclusion

For the foregoing reasons, Verizon requests that the Commission maintain the current rates for TRS, **STS**, IP-Relay, and VRS until it resolves the issues raised in its current rulemaking or alternatively **use** per minute rates established based on providers' projected cost and demand data, including marketing and outreach costs.

Respectfully submitted,

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